



House of Representatives

File No. 827

General Assembly

January Session, 2011

(Reprint of File No. 88)

House Bill No. 6338
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 20, 2011

**AN ACT CONCERNING LANDSCAPE ARCHITECTS, PENALTIES FOR
UNLICENSED OCCUPATIONAL WORK AND DEPARTMENT OF
CONSUMER PROTECTION RETIREMENT STATUS LICENSES.**

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. Section 20-373 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2011*):

3 After notice and opportunity for hearing as provided in the
4 regulations adopted by the Commissioner of Consumer Protection, the
5 board may: [suspend for a definite period, not to exceed one year, or
6 may] (1) Suspend or revoke any license [or may officially censure any
7 person holding a license] or registration issued pursuant to this
8 chapter, (2) issue a letter of reprimand to any such license or
9 registration holder, (3) place any such license or registration holder on
10 probationary status with certain conditions, (4) issue a civil penalty in
11 an amount not greater than one thousand dollars to any such license or
12 registration holder, or (5) impose any combination of subdivisions (1)
13 to (4), inclusive, of this section if it is shown that the license or
14 registration was obtained through fraud or misrepresentation; or if the

15 holder of the license or registration has been found guilty by the board
16 or by a court of competent jurisdiction of any fraud or deceit in [his]
17 such license or registration holder's professional practice; or if the
18 holder of the license or registration has been found guilty by the board
19 of [gross] negligence or [gross] incompetency; or if the board has
20 found that the licensee or registrant has violated any provision of this
21 chapter, or the regulations adopted pursuant to this chapter. [The
22 Secretary of the State shall be immediately notified of such suspension
23 or revocation.] Appeals from the decisions of the board may be taken
24 as provided in section 4-183. [, except such appeals shall be made
25 returnable to the judicial district of New Britain.] The board may
26 authorize the Department of Consumer Protection to reissue any
27 license or registration which has been revoked, and [it] the board may
28 modify [the suspension of any license which has been suspended] or
29 discontinue any action taken by it pursuant to this section.

30 Sec. 2. (NEW) (*Effective July 1, 2011*) (a) The practice of or the offer to
31 practice landscape architecture in this state by individual licensed
32 landscape architects under the corporate form, or by a corporation or
33 limited liability company that employs licensed landscape architects, is
34 permitted, provided: (1) Personnel of such corporation or limited
35 liability company who act on its behalf as landscape architects are
36 licensed or are exempt from licensure under the provisions of chapter
37 396 of the general statutes, and (2) such corporation or limited liability
38 company has been issued a certificate of registration by the State Board
39 of Landscape Architects as provided in subsection (b) of this section.

40 (b) A qualifying corporation or limited liability company desiring a
41 certificate of registration shall file with the board an application upon a
42 form prescribed by the Department of Consumer Protection,
43 accompanied by an application fee of eighty dollars. Each such
44 certificate shall expire annually and shall be renewable upon payment
45 of a fee of two hundred dollars. If all requirements of chapter 396 of
46 the general statutes are met, the board shall authorize the department
47 to issue to such corporation or limited liability company a certificate of
48 registration within thirty days after such application, provided the

49 board may refuse to authorize the issuance of a certificate if any facts
50 exist which would entitle the board to suspend or revoke an existing
51 certificate of registration.

52 (c) Each such corporation or limited liability company shall file with
53 the board a designation of an individual or individuals licensed to
54 engage in the practice of landscape architecture in this state who shall
55 be in charge of landscape architecture by such corporation or limited
56 liability company in this state. Such corporation or limited liability
57 company shall notify the board of any change in such designation
58 within thirty days after such change becomes effective.

59 (d) All final plans, drawings, specifications, reports or other
60 documents involving the practice of landscape architecture which are
61 prepared or approved by any such corporation or limited liability
62 company or landscape architect for use of or for delivery to any person
63 or for public record within this state shall be dated and bear the
64 signature and seal of the landscape architect who prepared them or
65 under whose supervision they were prepared.

66 (e) No corporation or limited liability company shall be relieved of
67 responsibility for the conduct or acts of its agents, employees or
68 officers by reason of its compliance with the provisions of this section,
69 nor shall any individual practicing landscape architecture be relieved
70 of responsibility for landscape architecture services performed by
71 reason of such individual's employment or relationship with such
72 corporation or limited liability company.

73 Sec. 3. Subsection (a) of section 20-341 of the general statutes is
74 repealed and the following is substituted in lieu thereof (*Effective*
75 *October 1, 2011*):

76 (a) Any person who wilfully engages in or practices the work or
77 occupation for which a license is required by this chapter without
78 having first obtained an apprentice permit or a certificate and license
79 for such work, or who wilfully employs or supplies for employment a
80 person who does not have a certificate and license for such work, or

81 who wilfully and falsely pretends to qualify to engage in or practice
82 such work or occupation, including, but not limited to, offering to
83 perform such work in any print, electronic, television or radio
84 advertising or listing when such person does not hold a license for
85 such work as required by this chapter, or who wilfully engages in or
86 practices any of the work or occupations for which a license is required
87 by this chapter after the expiration of such person's license, shall be
88 guilty of a class B misdemeanor, provided no criminal charges shall be
89 instituted against such person pursuant to this subsection unless the
90 work activity in question is reviewed by the Commissioner of
91 Consumer Protection, or the commissioner's authorized agent, and the
92 commissioner or such agent specifically determines, in writing, that
93 such work activity requires a license and is not the subject of a bona
94 fide dispute between persons engaged in any trade or craft, whether
95 licensed or unlicensed. Notwithstanding the provisions of subsection
96 (d) or (e) of section 53a-29 and subsection (d) of section 54-56e, if the
97 court determines that such person cannot fully repay any victims of
98 such person within the period of probation established in subsection
99 (d) or (e) of section 53a-29 or subsection (d) of section 54-56e, the court
100 may impose probation for a period of not more than five years. The
101 penalty provided in this subsection shall be in addition to any other
102 penalties and remedies available under this chapter or chapter 416.

103 Sec. 4. Subsection (a) of section 20-334 of the general statutes is
104 repealed and the following is substituted in lieu thereof (*Effective*
105 *October 1, 2011*):

106 (a) No person shall engage in, practice or offer to perform the work
107 of any occupation subject to this chapter in this state, including
108 offering to perform such work in any print, electronic, television or
109 radio advertising or listing, unless such person has first obtained a
110 license as provided in section 20-333, or possesses a card of registration
111 from the Labor Department or the board and is subject to all of the
112 regulations adopted under this chapter for the purpose of governing
113 apprenticeship training, or has been issued a license for such particular
114 work under this chapter prior to July 6, 1967.

115 Sec. 5. (NEW) (*Effective January 1, 2012*) (a) Any person currently
116 holding a license issued by the Department of Consumer Protection
117 pursuant to title 20 of the general statutes who has attained the age of
118 sixty-five may renew his or her license as a retirement status license
119 pursuant to subsections (b) to (d), inclusive, of this section.

120 (b) An applicant for a retirement status license shall submit his or
121 her original license to the Department of Consumer Protection, along
122 with a letter of request for such classification. The letter shall contain a
123 statement expressing the licensee's current retirement status and the
124 acceptance of a restriction on the retirement status license prohibiting
125 the applicant from actively engaging in the practice of the occupation
126 or trade for which a license was originally issued.

127 (c) A licensee issued a retirement status license shall not practice or
128 offer to practice the occupation or trade for which a license was
129 originally issued.

130 (d) If the Department of Consumer Protection issues a retirement
131 status license pursuant to this section, it shall return the original
132 license submitted pursuant to subsection (b) of this section to the
133 applicant. Such original license shall bear a designation or be stamped
134 "Retired".

135 (e) The fee for a retirement status license shall be twenty dollars.

136 (f) A licensee issued a retirement status license may restore such
137 licensee's original license by submitting a form, to be provided by the
138 Department of Consumer Protection, requesting reinstatement and by
139 paying the current annual fee for such license.

140 (g) The Commissioner of Consumer Protection may, for good cause
141 shown, grant a retirement status license to a person who does not meet
142 the requirements of subsection (a) of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2011</i>	20-373
Sec. 2	<i>July 1, 2011</i>	New section
Sec. 3	<i>October 1, 2011</i>	20-341(a)
Sec. 4	<i>October 1, 2011</i>	20-334(a)
Sec. 5	<i>January 1, 2012</i>	New section

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 12 \$	FY 13 \$
Consumer Protection, Dept.	GF - Revenue Impact	less than 2,120 (revenue loss)	less than 17,200 (revenue gain)
Judicial Dept.	GF - Revenue Gain	less than 10,000	less than 10,000
Judicial Dept. (Probation)	GF - Potential Cost	less than 10,000	less than 10,000

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in a revenue gain in FY 12 of \$17,880 and \$37,200 in FY 13 due to two factors 1) broadening of civil penalties and 2) instituting a fee for landscape architects. The Department of Consumer Protection had 5 complaints in FY10 of the nature specified in the bill which would now be subject to a \$1,000 civil penalty. Additionally the bill results in a revenue gain of \$12,880 in FY 12 and \$32,200 in FY 13 by instituting an initial \$80 application fee and a \$200 annual fee thereafter for registering as a practicing landscape architect. There are currently 161 landscape architects in the state.

The bill results in a revenue loss of less than \$30,000 to the state by authorizing the Department of Consumer Protection (DCP) to issue retirement status licenses. The bill allows any person age 65 or older holding a DCP license to renew his or her license as a retirement status license. The license fee is \$20. Examples of current license fees include; Architect \$190, Locksmith \$200, Electrical Unlimited Journeyman \$120, and Plumbing and Piping Unlimited Journeyman \$120. It is

anticipated that fewer than 100 such licenses will be requested in any fiscal year.

The bill establishes advertising to practice a licensed trade without a license as a class B misdemeanor, which is punishable by a fine of up to \$1,000 and/or imprisonment for up to 6 months. If found guilty of this offense, the offender may be required to pay restitution. In cases where restitution payments cannot be made, the court may sentence the offender to probation.

To the extent that these changes increase the likelihood that offenders would be prosecuted or receive harsher penalties than currently provided for, a potential revenue gain from criminal fines and potential cost for probation supervision in the community would result. It is anticipated that relatively few fines would be imposed on an annual basis, and, consequently, any revenue gain under the bill is expected to be minimal. On average, it costs the state \$3,736 to supervise an offender on probation.

The bill would also result in additional hearings before the court. It is anticipated that the number of additional hearings would be minimal, and would not result in additional cost to the Judicial Department.

The Department of Consumer Protection currently receives approximately 100 complaints in which occupational trades people fail to properly disclose their license numbers. Additional complaints due to provisions in the bill are anticipated to result in additional revenue of less than \$10,000 through civil penalties.

House "A" (LCO 6454) struck the original bill and resulted in the fiscal impact described above.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**HB 6338 (as amended by House "A")******AN ACT CONCERNING LANDSCAPE ARCHITECTS.*****SUMMARY:**

This bill (1) makes several changes in the landscape architect statutes, including allowing corporations and limited liability companies (businesses) to register to practice landscape architecture and broadening the penalties for specified violations; (2) specifically prohibits advertising by nonlicensed tradespersons; and (3) authorizes the Department of Consumer Protection (DCP) to issue retirement status licenses.

*House Amendment "A" adds the provisions (1) prohibiting nonlicensed tradesperson advertising and (2) authorizing DCP retirement status licenses.

EFFECTIVE DATE: July 1, 2011 for the landscape architect provisions, October 1, 2011 for the nonlicensed tradesperson provisions, and January 1, 2012 for the DCP retirement provisions.

LANDSCAPE ARCHITECTS***Registration***

The bill allows landscape architects to incorporate and businesses to practice landscape architecture if (1) the landscape architects for the business are either licensed or exempt and (2) the business has been issued a DCP certificate of registration upon authorization from the landscape architect board.

A qualifying business must apply to the board for a certificate of registration on an application form prescribed by DCP, along with an \$80 application fee. Each certificate expires annually and is renewable

for a \$200 fee. If the requirements are met, the board must authorize DCP to issue a certificate of registration within 30 days of the application. The board may refuse to authorize DCP to issue the certificate if it finds grounds for suspending or revoking an existing certificate, such as fraud or misrepresentation.

Each business must designate at least one individual to be in charge of landscape architecture and file their name or names with the board. The business must notify the board of any change in designation within 30 days of the change.

The bill requires landscape architects working for registered businesses to sign, date, and seal all final plans, drawings, specifications, reports, and other related documents they approve or prepare for use or delivery to anyone or for public record in the state.

The bill specifies that it does not relieve businesses of the responsibility for the conduct or acts of its agents, employees, or officers because they have complied with the bill. No individuals practicing landscape architect are relieved of responsibility for services they perform because they are employed by, or have relationship with, a business engaging in landscape architecture.

Penalties

The bill broadens the penalties the board may impose on people who (1) obtain a license or registration through fraud or misrepresentation, (2) engage in fraud or deceit in their professional practice, (3) violate any laws or regulations on the practice of landscape architecture, and (4) are found guilty of general negligence or incompetence, instead of gross acts. It also extends the board's enforcement authority to cover businesses registered to practice landscape architecture in the state.

Currently, the law allows the board to (1) suspend a license for up to one year, (2) revoke it, or (3) officially censure any licensee. The bill eliminates the one year cap on suspensions; thus allowing the board to

impose unlimited suspensions. The bill removes the board's authority to censure. It applies all penalties to both licenses and registrations and authorizes the board to (1) issue a letter of reprimand, (2) place license and registration holders on probationary status with certain conditions, (3) issue a civil penalty of up to \$1,000, or (4) a combination of any penalties listed. It authorizes the board to modify or discontinue any action it takes. The bill also allows the board to authorize DCP to reissue any registration that has been revoked. Currently, it can only reissue licenses.

The bill eliminates the requirement that the board notify the secretary of the state when a license is suspended or revoked. It also gives parties discretion to appeal a board decision to the judicial district court where they live, instead of only to the New Britain Superior Court.

UNLAWFUL NONLICENSED ADVERTISING

The law prohibits anyone from (1) willfully and falsely pretending to qualify to practice a licensed trade or (2) offering to or practicing a licensed trade without a license or registration. This bill specifies that the prohibition applies to people who, in a print, electronic, television or radio advertisement or listing offer to perform work they are not licensed to perform. The covered trades are: electrical; plumbing; heating, piping, and cooling; elevator installation and repair; solar electrical; solar thermal; fire protection sprinkler systems; gas hearths; irrigation; medical gas and vacuum systems; sheet metal; and automotive and flat glass.

By law, the consumer protection commissioner and the licensing boards overseeing these trades may impose civil penalties (see BACKGROUND) for licensure violations, including the advertising ban the bill establishes. In addition, violators commit a class B misdemeanor (punishable by up to six month's imprisonment, a fine of up to \$1,000, or both), an unfair or deceptive trade practice, and are required to pay restitution. If they cannot pay restitution, courts may sentence them to probation.

RETIREMENT STATUS LICENSE

The bill allows anyone age 65 or older who needs to renew a DCP-issued professional or occupational license under Title 20, to pay \$20 to obtain a retirement status license instead of paying the regular license renewal fee. The bill bars a retirement status licensee from practicing or offering to practice the occupation or trade for which he or she was licensed.

An applicant must submit his or her original license to DCP, along with a letter (1) requesting the retirement status, (2) expressing the licensee's current retirement status, and (3) agreeing not to actively engage in the practice of the occupation or trade for which he or she was originally licensed.

If DCP issues a retirement status license, it must return the original license to the applicant bearing a designation or stamped "Retired." The DCP commissioner may, for good cause, grant a retirement status license to a person under age 65.

A licensee may restore his or her original license by (1) submitting a DCP form requesting reinstatement and (2) paying the current annual license fee.

BACKGROUND

Civil Penalties

The DCP commissioner may impose fines of up to (1) \$1,000 for a first violation, (2) \$1,500 for a second violation, and (3) \$3,000 for subsequent violations occurring less than three years after a previous violation.

Criminal Penalty

A class B misdemeanor is punishable by up to six month's imprisonment, a fine of up to \$1,000, or both. Before anyone may be prosecuted for a licensing law violation, the DCP commissioner must (1) review the activity in question and (2) make a written determination that the activity requires a license and is not the subject

of a bona fide dispute between members of a trade or craft, regardless of whether they are licensed.

Connecticut Unfair Trade Practices Act (CUTPA)

CUTPA prohibits unfair and deceptive acts or practices. It allows the DCP commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

COMMITTEE ACTION

General Law Committee

Joint Favorable

Yea 15 Nay 0 (03/03/2011)

Finance, Revenue and Bonding Committee

Joint Favorable

Yea 44 Nay 5 (04/18/2011)

Judiciary Committee

Joint Favorable

Yea 38 Nay 0 (04/28/2011)